

MUNICIPAL UTILITY DISTRICT AMENDMENT REVIEW SHEET

CASE: C12M-07-0001 (RCA) Camden Property **P.C. Date:** May 8, 2007

ADDRESS: State Farm Way at West Parmer Lane

OWNER/APPLICANT North Austin Utility District No.1

AGENT: Bury+Partners (Melissa Matthiesen)

AREA: 25.7 acres

PROPOSED MUD AMENDMENT : Amend the restrictive covenant related to the North Austin Utility District No.1 allowing multi-family uses on 25.7 acres currently designated as retail uses

SUMMARY STAFF RECOMMENDATION:

Staff recommends approval of the restrictive covenant amendment.

PLANNING COMMISSION RECOMMENDATION:

May 8, 2007: Approved staff's recommendation to amend the restrictive covenant on consent (8-0).

DEPARTMENT COMMENTS:

This item is a follow-up item from an action taken by Planning Commission on April 10, 2007. At that time the Planning Commission approved 9-0 an amendment to the North Austin MUD #1 changing the designation of 25.7 acres on the land use map from "General Retail Uses" to "Multi-Family".

The property also had a restrictive covenant to help enforce the land use plan. This amendment would bring the restrictive covenant in line with the land use plan amendment already approved by Planning Commission.

This undeveloped site is in the City of Austin 2-mile ETJ, on Parmer Lane, near the intersection with FM 620. This request, would be Amendment #11 to the North Austin Utility District No.1 Land Plan, would change 25.7 acres currently designated as "GR Uses to "multi-family". The intent is to construct approximately 600 residential units.

MUD amendments, can frequently be approved administratively. However, this MUD consent agreement specifies that amendments that would increase the currently-approved number of residential units in the MUD require approval of the Planning Commission.

This MUD has been amended ten previous times. The cumulative effect of these amendments has been to lower the number of approved residential units. Although this amendment would raise the number of units over the current approved total, the number of proposed units, even when taken with amendment #12 (Amber Oaks) is still less than the number of residential units in original MUD land plan and consent agreement.

TIA: N/A

WATERSHED: Lake Creek

DESIRED DEVELOPMENT ZONE: No

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

CITY COUNCIL DATE:

ACTION:

May 17, 2006

ORDINANCE READINGS:

1st

2nd

3rd

ORDINANCE NUMBER:

CASE MANAGER: Robert Heil

PHONE: 974-2330

e-mail address: robert.heil@ci.austin.tx.us

AMENDMENT TO A DECLARATION OF RESTRICTIVE COVENANT
Williamson County, Texas, Public Records, Vol. 2004, Pages 618-623

THE STATE OF TEXAS	§	
	§	KNOW ALL PERSONS BY
COUNTY OF WILLIAMSON	§	THESE PRESENTS:

This amendment to a Declaration of Restrictive Covenant (the "Declaration") is made by Austin Jack, a Delaware limited liability company ("Austin Jack").

R E C I T A L S :

1. Austin Jack is the owner of that certain tract of real property (the "Austin Jack" Property") located in Williamson County, Texas, as more particularly described by metes and bounds on Exhibit A, attached hereto and incorporated herein by reference. The Austin Jack Property is out of a portion of the "State Farm Property," as more particularly described by metes and bounds in the Williamson County Public Records, Volume 2004, Pages 621-622.

2. The terms of that certain Fifth Amendment to the Agreement Concerning Creation and Operation of the North Austin Municipal Utility District No. 1 (the "Fifth Amendment") require that certain restrictive covenants regarding permissible land uses be placed on the State Farm Property.

3. The Eleventh Amendment to the Agreement Concerning Creation and Operation of the North Austin Municipal Utility District No. 1 (the "Eleventh Amendment") amends the permissible land uses applicable to the Austin Jack Property.

4. Austin Jack desires to amend this Declaration of Restrictive Covenants to change the permissible land uses in accordance with the Eleventh Amendment.

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration received from the City of Austin, the receipt and sufficiency of which are hereby acknowledged, it is declared that Austin Jack, L.L.C., as the owner of the Austin Jack Property, shall hold, sell, and convey the Austin Jack Property subject to the covenants and restrictions listed below:

1. Permissible Uses. Paragraph 1, "Permissible Uses," of the Declaration of Restrictive Covenant found in the Williamson County Public Records Volume 2004, Pages 618-623 shall be substituted with the following:

The land uses on the 25.75 acre Austin Jack property, a part of the AWLC Tract, as dictated on the Eleventh Amended Land Use Plan include only the range of uses permitted in the Multi-Family Residence Moderate – High Density District use district as described in City Code Section 25-2-65, as it existed in May 2007.

The land uses approved on the remainder of the AWLC Tract include only the range of uses permitted in the GR use district as described in City Code Section 13-2-221, as it existed in August 1990, provided that liquor sales will be permitted inside the proposed hotel uses.

2. Enforcement by the City. If any person or entity shall violate or attempt to violate this Declaration it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Declaration, to prevent the person or entity from such actions, and to collect damages for such actions.

3. Severability. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.

4. Waiver. If at any time the City of Austin fails to enforce this Declaration, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

5. Amendment. This Declaration may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner of the Austin Jack Property at the time of such modification, amendment, or termination.

6. Duration. The restrictions impressed herein upon the Austin Jack Property shall run with the land and shall be binding upon Austin Jack, its successors and assigns.

EXECUTED this the _____ day of May, 2007.

Austin Jack:

AUSTIN JACK, L.L.C.,
A Delaware limited liability company

By: **STATE FARM REALTY INVESTMENT
COMPANY f/k/a
AMBERJACK, LTD.,** its managing member

By: _____

John R. Higgins
Vice President

By: _____

G. Roger Gielow
Secretary

City:

ACKNOWLEDGMENT AND CONSENT:

CITY OF AUSTIN,
A Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

Before me _____, Notary Public, on this day personally appeared Laura J. Huffman, Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.

Given under my hand and seal of office on _____, 2007.

Notary Public

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

Before me _____, Notary Public, on this day personally appeared John R. Higgins, Vice President of State Farm Realty Investment Company f/k/a Amberjack, Ltd., managing member of Austin Jack, L.L.C., a Delaware Limited Liability Company, on behalf of said company.

Given under my hand and seal of office on _____, 2007.

Notary Public

DECLARATION OF RESTRICTIVE COVENANT

THE STATE OF TEXAS
COUNTY OF WILLIAMSON

§
§
§

KNOW ALL PERSONS BY
THESE PRESENTS:

This Declaration of Restrictive Covenant (the "Declaration") is made by State Farm Mutual Automobile Insurance Company, an Illinois corporation ("State Farm").

RECITALS:

1. State Farm is the owner of that certain tract of real property (the "State Farm Property") located in Williamson County, Texas, as more fully described in Exhibit A attached hereto and incorporated herein by reference;

2. The terms of that certain Fifth Amendment to the Agreement Concerning Creation and Operation of the North Austin Municipal Utility District No. 1 (the "Fifth Amendment"), executed to be effective as of even date herewith, require that certain restrictive covenants regarding permissible land uses be placed on the State Farm Property;

3. State Farm desires to execute this Declaration in order to comply with the requirements of the Fifth Amendment;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration received from the City of Austin, the receipt and sufficiency of which are hereby acknowledged, it is declared that State Farm, as the owner of the State Farm Property, shall hold, sell and convey the State Farm Property subject to the covenants and restrictions listed below:

1. Permissible Uses. The land uses approved on the Third Amended Land Use Plan (as that term is defined in the Fifth Amendment) that are applicable only to the State Farm Property include only the range of uses permitted in the "GR" use district as described in Sec. 13-2-221 of the Austin City Land Development Code, as of August 1990, provided that liquor sales will be permitted inside the proposed hotel only. The land uses approved on the Third Amended Land Use Plan shall not be cumulative.

2. Enforcement by City. If any person or entity shall violate or attempt to violate this Declaration it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Declaration, to prevent the person or entity from such actions, and to collect damages for such actions.

OFFICIAL RECORDS
WILLIAMSON COUNTY, TEXAS

3. Interpretation of Fifth Amendment. The Department of Law of the City of Austin has reviewed this Declaration and finds the restrictions contained herein to be consistent with and a proper interpretation of the requirements of Paragraph 6 of the Fifth Amendment.

4. Severability. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.

5. Waiver. If at any time the City of Austin fails to enforce this Declaration, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

6. Amendment. This Declaration may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner of the State Farm Property at the time of such modification, amendment or termination.

7. Duration. The restrictions impressed herein upon the State Farm Property shall run with the land and shall be binding upon State Farm, its successors and assigns.

EXECUTED this the 8th day of April, 1991.

State Farm:

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, AN ILLINOIS
CORPORATION

By: Bruce Calles
Name: BRUCE CALLES, Vice President
Title:

City:

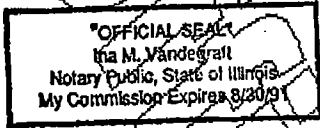
ACKNOWLEDGMENT AND CONSENT:

CITY OF AUSTIN, A TEXAS MUNICIPAL
CORPORATION

By: Jack Plunk
Name: JACK PLUNK, Mayor
Title: Mayor, City Manager

THE STATE OF Illinois §
COUNTY OF McLean §

This instrument was acknowledged before me, on April 14, 1991, by Bruce Callin, the Vice President of State Farm Mutual Automobile Insurance Company, an Illinois corporation, on behalf of said corporation.



Ina M. Vandegraff
Notary Public in and for
The State of Illinois
INA M. VANDEGRAFF
Notary Typed/Printed Name
My Commission Expires: 8-30-91

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on April 14, 1991, by Joseph L. Demart as Asst. City Manager of City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



Lucile Mokry
Notary Public in and for
The State of Texas
LUCILE MOKRY
Notary Typed/Printed Name
My Commission Expires: _____

After Recording, Please return to:
Martin L. Camp
Jones, Day, Reavis & Pogue
301 Congress Ave., Ste. 1200
Austin, TX 78701

EXHIBIT "A"

LEGAL DESCRIPTION

Of a 96.655 acre tract or parcel of land out of and a part of the Thomas P. Davey Survey No. 169, situated in Williamson County, Texas, said 96.655 acres being a portion of Tract Two of that 1,195.75 acre tract of land conveyed to Austin White Lime, by Deed of record in Volume 442, Page 51 of the Deed Records of Williamson County, Texas, the said 96.655 acres being that portion of the said 1,195.75 acre tract which lies south of State Highway R.M. 620, West of Farmer Lane (R.M. 734), and being more particularly described by metes and bounds as follows:

Beginning, at a 1/2 inch iron rod found in the existing south line of State Highway R.M. 620 (400 foot right-of-way), for the southwest corner of that certain 5.293 acre tract of land conveyed to the State of Texas for right-of-way purposes by deed of record in Volume 1592, Page 338 of the said Deed Records, same being the northeast corner of the remainder of that tract conveyed to San Antonio Savings Association by deed of record in Volume 1436, Page 325 of the said Deed Records, said point also being the northwest corner of the remainder of Tract Two of the said 1,195.75 acre tract and the tract herein described:

THENCE, along the south right-of-way line of said R.M. 620, same being the south line of the said 5.293 acre tract and the north line of the remainder of the said Tract Two of the 1,195.75 acre tract and the tract herein described, the following three (3) courses and distances:

1. Along a curve to the left having a radius of 4,019.72 feet, a central angle of $07^{\circ}44'16''$ E, a chord distance of 542.45 feet (chord bears $N 72^{\circ}10'35''$ E) for an arc distance of 542.86 feet to a brass disk in concrete (highway monument) found for the point of tangency;
2. $N 68^{\circ}18'27''$ E, 922.50 feet to a brass disk in concrete (highway monument) found for an angle point;
3. $S 66^{\circ}45'24''$ E, 84.87 feet to a brass disk in concrete (highway monument) found in the west right-of-way line of Farmer Lane (200 foot right-of-way), same being the west line of that certain 13.204 acre tract of land conveyed to the State of Texas for right-of-way purposes by deed of record in Volume 1592, Page 342, of the said Deed Records, for the southeast corner of the said 5.293 acre right-of-way tract;

THENCE, $S 21^{\circ}42'32''$ E, leaving the south line of said R.M. 620, continuing along the west line of said Farmer Lane, a distance

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of 2,664.59 feet to an iron rod set for the point of intersection with the most westerly, south line of the said remainder of the 1,195.75 acre tract, same being at or near the south line of the said Thomas P. Davey Survey No. 169, which is the north line of the Malcolm M. Hornsby Survey No. 280, same being the northerly line of that 347.13 acre tract conveyed to Austin White Linn by Deed of Record in Volume 682, Page 907 of the said Deed Records, said point being the southeast corner of the herein described tract;

THENCE, S 69°00'29"W, leaving the west line of said Parmer Lane, continuing along the most westerly, south line of the said remainder of the 1,195.75 acre tract, same being the north line of the said 347.13 acre tract, a distance 705.30 feet to a 1/2 inch iron rod in concrete found for the northwest corner of the said 347.13 acre tract, same being the northeast corner of that 66.153 acre tract conveyed to First Republic Bank Austin, N.A. by deed of record in Volume 1669, Page 452 of said Deed Records;

THENCE, continuing along the most westerly, south line of the said remainder of the 1,195.75 acre tract, same being the north line of the said 66.153 acre tract, the following two (2) courses and distances:

1. S 68°09'43"W, 441.43 feet to a 1/2" iron rod in concrete found for an angle point;
2. S 67°50'10"W, 446.23 feet to an "X" in concrete set for the most westerly southwest corner of the said remainder of the 1,195.75 acre tract, same being the southeast corner of the abovementioned San Antonio Savings Association from which a 1/2" iron rod found for the northwest corner of the said 66.153 acre tract bears S 67°50'10"W, a distance of 30.19 feet;

THENCE, leaving the north line of the said 66.153 acre tract, continuing along the most westerly line of the said remainder of the 1,195.75 acre tract, same being the east line of the said Austin 620 Joint Venture Tract, the following two (2) courses and distances:

1. N 19°06'20"W, passing at a distance of 890.71 feet, a 1/2 inch iron rod found, passing at a distance of 970.71 feet, a 1/2 inch iron rod found, continuing for a total distance of 1,666.24 feet to an iron rod set for an angle point;
2. N 21°08'17"W, a distance of 1,592.39 feet to the POINT OF BEGINNING, CONTAINING 96.655 acres of land area, more or less, within these metes and bounds.

4101P

FILED FOR RECORD
WILLIAMSON COUNTY, TEXAS

1991 APR 12 PM 3:15

James H. Boppre
CLERK

STATE OF TEXAS COUNTY OF WILLIAMSON
I hereby certify that this instrument was FILED
on the date and at the time stamped hereon
by me, and was duly RECORDED in the Volume
and Page of the named RECORDS of Williamson
County, Texas, as stamped hereon by me, on

APR 15 1991



James H. Boppre
COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

10647

11.00 per arch
revenue & long
James, D. G.